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5

6

7 **UNITED STATES BANKRUPTCY COURT**

8 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

9

10 In re Richard Irving Levinson and Lisa
11 Marie Levinson,
12 Debtors

13 Dennis Gewant DBA Atlas
14 Judgment Recovery,
15 Plaintiff,

16 v.

17 Richard Irving Levinson and Lisa
18 Marie Levinson,
Defendants

Case No.: 2:22-BK-15330-WB
Chapter 7 Proceeding
Adv. Proc. No. 2:22-AP-01218-WB
DC NO.: DG-2

**PLAINTIFF DENNIS GEWANT'S
RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Date/Time: June 6, 2023, 2:00 PM
Courtroom: 1375
Judge: Hon. Julia W. Brand

Filed Concurrently with:
- Statement of Genuine Issues
- Declaration of Dennis Gewant

21 **A. INTRODUCTION/SUMMARY**

22 The record here is clear and ample under bankruptcy law, as applied in California, to
23 support a complete denial of the Motion.

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28 PLAINTIFF DENNIS GEWANT'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1 As a threshold matter, the Motion is improper. A motion under FRCP 56/FRBP 7056
2 must “[identify] each claim or defense — or the part of each claim or defense — on which
3 summary judgment is sought”. Res judicata and claim or issue preclusion are not parts of any of
4 the claims or defenses in this case. Instead they are principles that govern whether a burden of
5 proof has already been met with regard to any of the claims. Res judicata could have been a
6 defense if the Defendants had won the state court case, but they didn’t.
7

8 Plaintiff Gewant informed Defendants through counsel that Gewant intended to file his
9 own motion for summary judgment, yet Defendants chose not to wait for that. Instead they have
10 evidently tried once again to raise Gewant’s costs by filing an unnecessary and mostly frivolous
11 motion. Perhaps the Court can save itself the time of reading further.
12

13
14 Nonetheless, Gewant files this full-fledged Response out of an abundance of caution.
15 His own motion for summary judgment will follow soon, making many of the same points made
16 here.
17

18 Judge Irving S. Feffer in the original Los Angeles state court case *necessarily decided*
19 that the elements of common law fraud, including its *scienter* requirement, were met. If Judge
20 Feffer had not so decided, he could not have found – as he did – that the Levinsons were liable
21 “on all counts plead [sic],” specifically including “fraud” with no modifier in front of that word.
22
State Court Judgment, Ex. 3 to the Motion.
23

24 The Motion admits (10:7-9) that the elements of fraud are the same (a “mirror image”)
25 under California state law as under bankruptcy law. Any set of facts that would support a
26

1 finding of garden-variety fraud under California state law, as occurred here, would also support
2 such a finding under California bankruptcy law.

3
4 Moreover, Judge Feffer also *necessarily decided* that all the elements of the alleged
5 violations of California Business & Professions Code (BPC) 17200 AND 17500 were met. Only
6 if he had so decided, would Judge Feffer have awarded treble damages to punish and deter that
7 conduct and attributed that award to violations of BOTH those Codes.
8

9 The Motion does not discuss BPC 17500, which explicitly states intent as an element
10 that, again, is consistent with that requirement under bankruptcy law. The Motion discusses
11 BPC 17200 in depth, but only *mentions* BPC 17500, *totally ignoring its content*. This is
12 understandable, in view of how devastating that content is to the Defendants' position. Still, the
13 omission and the false summary statement violate the Code of Professional Conduct, FRBP
14 9011, and 28 USC 1927. The Motion's statement that no finding of intent is established by the
15 state court judgment is an *intentional untruth*, and should be punished by this Court by more
16 than a simple denial of the Motion.
17
18

19 The Defendants' other arguments are also not just weak, but are in most cases frivolous.
20 Consistent with the Answer, the Defendants' Motion denies the clear import of the state court
21 judgment's explicit findings. The Motion makes up nonexistent legal requirements out of whole
22 cloth. Lady Justice's blindfold is "understood to represent impartiality, the ideal that justice
23

1 should be applied without regard to wealth, power, or other status”¹; it is not meant as a model
2 for counsel to turn a blind eye to the undeniable facts of the case and the laws that clearly
3 govern it.

4

5 Lesser violations include the failure to authenticate any of the exhibits, and the failure to
6 make all the exhibits computer-searchable.

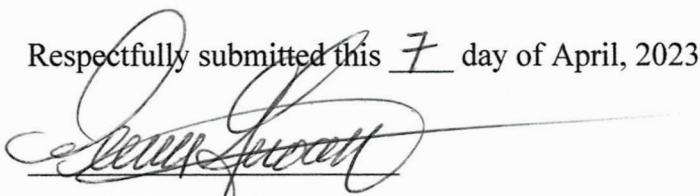
7

8 To minimize his costs and respect the Court’s time, Gewant has decided not to file a
9 motion for sanctions. Instead, he presents his case on the merits here and will do so more
10 thoroughly in his own motion for summary judgment. This Court can decide *sua sponte* how
11 harshly to punish the Defendants and their counsel for their multiple, obvious, and undeniable
12 violations of rules that are intended, with good reason, “to secure the just, speedy, and
13 inexpensive determination of every action and proceeding.” FRCP 1/FRBP 1001.

14

15 Respectfully submitted this 7 day of April, 2023.

16

17 
18 Plaintiff Dennis Gewant

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26 ¹ https://en.wikipedia.org/wiki/Lady_Justice

27

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22	Rutter Group, <i>Cal. Prac. Guide Bankruptcy Ch. 22-I</i>	21
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23 **Constitutional Provisions**

24	Article IV of the US Constitution	20
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1 **B. THE MOTION IS IMPROPER**

2 A motion under FRCP 56/FRBP 7056 must “[identify] each claim or defense — or the
3 part of each claim or defense — on which summary judgment is sought”. Res judicata and
4 claim or issue preclusion are not parts of any of the claims or defenses in this case. Instead they
5 are principles that govern whether a burden of proof has already been met with regard to any of
6 the claims. Res judicata could have been a defense if the Defendants had won the state court
7 case, but they didn’t.

8
9 The most superficially compelling statements in the Statement of Uncontroverted Facts
10 (improperly titled “Proposed Findings of Fact”) are improper mixtures of fact and legal
11 conclusion, and/or are otherwise misleading. Gewant’s Statement of Genuine Issues elucidates
12 this.
13

14
15 *DEFENDANTS’ MOTION IS PROCEDURALLY IMPROPER AND FAILS TO SHIFT
16 THE BURDEN OF PROOF*

17 Rule 56 provides in relevant part that “[a] party may move for summary judgment,
18 identifying each claim or defense — or the part of each claim or defense — on which summary
19 judgment is sought.” Plaintiff’s sole claim in this adversary proceeding is for non-
20 dischargeability of the underlying debt on the grounds of fraud under 11 USC § 523(A)(2)(A).
21 Defendants’ motion does not really seek summary judgment on this claim, or on any affirmative
22 defense. Rather, it seeks a finding by this Court that the doctrine of issue preclusion is
23 inapplicable to Plaintiff’s non-dischargeability claim. The procedural problem for Defendants is
24
25
26
27

28 PLAINTIFF DENNIS GEWANT’S RESPONSE TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

1 that even if it were true that issue preclusion does not apply here, it would not dispose of
2 Plaintiff's claim. It would merely make Plaintiff's job more difficult at the trial of this action.
3

4 This conclusion—the fact that granting Defendants' motion on the question of issue
5 preclusion would not dispose of any claim or defense—ties into another fundamental failure of
6 Defendants' motion: it completely fails to meet the initial burden of production.
7

8 Because summary judgment is a “drastic device,” cutting off a party's right to present its
9 case to a jury, the moving party bears a “heavy burden” of demonstrating the absence of any
10 triable issue of material fact. *Ambat v. City & County of San Francisco* (9th Cir. 2014) 757 F3d
11 1017, 1031. On a summary judgment motion, the moving party must generally demonstrate
12 there is no triable issue as to the matters alleged in its own pleadings; i.e., plaintiff on a claim
13 for relief or defendant on an affirmative defense. *Calderone v. United States* (6th Cir. 1986) 799
14 F2d 254, 259. This requires the moving party to establish beyond controversy every essential
15 element of its claim or defense: “If the movant bears the burden of proof on an issue, either
16 because he is the plaintiff or as a defendant he is asserting an affirmative defense, he must
17 establish beyond peradventure all of the essential elements of the claim or defense to warrant
18 judgment in his favor.” *Fontenot v. Upjohn Co.* (5th Cir. 1986) 780 F2d 1190, 1194.
19
20

21 Here, Defendants do not adduce any of their own evidence in support of the motion. No
22 declarations are provided. No documents other than some of those attached to the Complaint in
23 this action are referenced. Without an evidentiary showing, Defendants do not shift the burden
24 of proof to Plaintiff.
25

26
27 PLAINTIFF DENNIS GEWANT'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
28

1 **C. ISSUE PRECLUSION APPLIES**

2 Even if the Court were to ignore the procedural and evidentiary defects on the face of
3 Defendants' motion, it should fail on the merits because issue preclusion certainly applies in
4 this case.

5
6 Plaintiff's sole cause of action in this proceeding is under 11 USC § 523(A)(2)(A).The
7 test for determining whether a debt is non-dischargeable under section 523(a)(2)(A) includes:
8 (1) misrepresentation of a material fact; (2) knowledge of the falsity of the representation; (3)
9 intent to induce reliance; (4) justifiable reliance; and (5) damages. *Johnson v. JP Morgan Chase*
10 *Bank*, 395 B.R. 442, 448 (E.D. Cal. 2008), citing *In re Tsurukama*, 287 B.R. 515, 520 (B.A.P.
11 9th Cir. 2002). Knowledge and intent can be proven through circumstantial evidence or by
12 inferences from the debtor's course of conduct. *McCray v. Barrack*, 217 B.R. 598, 607 (B.A.P.
13 9th Cir. 1998). A promise made without a present intent to perform satisfies section
14 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989). Plaintiff is not required to prove
15 that Defendants themselves directly or indirectly benefitted from the fraudulent conduct.
16 *Muegler v. Bening*, 413 F.3d 980, 983-984 cert den. (2006) 546 U.S. 1139, 126 S.Ct. 1149 (9th
17 Cir. 2005).

18
19 The state court found in favor of Herzog "upon all counts plead." (Complaint, DE #1,
20 Ex. 1, p. 2.) One of the counts plead was for fraud. (Complaint, Ex. 5, p. 1, 5.)

21
22 Unlike claim preclusion, issue preclusion may apply to a dischargeability claim. See
23 *Grogan v. Garner*, 498 U.S. 279 at 284 n. 11, 111 S.Ct. 654 ("We now clarify that collateral

1 estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).”).
2 Six criteria must be met for issue preclusion to apply to a California judgment under *Lucido v.*
3 *Superior Court*, 51 Cal.3d 335 at 341-43, 272 Cal.Rptr. 767, 795 P.2d 1223:(1) the issue “must
4 be identical to that decided in a former proceeding”; (2) it “must have been actually litigated in
5 the former proceeding”; (3) it “must have been necessarily decided in the former proceeding”;
6 (4) “the decision in the former proceeding must be final and on the merits”; (5) “the party
7 against whom preclusion is sought must be the same as, or in privity with, the party to the
8 former proceeding”; and (6) application of issue preclusion must be consistent with the public
9 policies of “preservation of the integrity of the judicial system, promotion of judicial economy,
10 and protection of litigants from harassment by vexatious litigation.” Whether the elements of
11 issue preclusion are met is a factual issue on which Karapet has the burden to “introduce a
12 record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior
13 action.” *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 (9th Cir. BAP 1995); *Berr v. FDIC (In*
14 *re Berr)*, 172 B.R. 299, 306 (9th Cir. BAP 1994). This burden is made weightier by the
15 presumption against applying issue preclusion in nondischargeability cases. *Honkanen v.*
16 *Hopper (In re Honkanen)*, 446 B.R. 373, 384 (9th Cir. BAP 2011). [From *In re Yaikian*, 508
17 B.R. 175, 183-184 (Bankr. S.D. Cal. 2014).]

21
22 1. *The issue under § 523(A)(2)(A) is identical to that decided in the state court action*
23 “[T]he first (identical issue) is met because fraud and nondischargeability under §
24 523(a)(2)(A) have identical elements.” *In re Yaikian, supra*, citing *Younie v. Gonya (In re*
25 *Younie)*, 211 B.R. 367, 374 (9th Cir. BAP 1997), aff’d, 163 F.3d 609 (9th Cir.1998).

1 2. *The issue was actually litigated*

2 As stated by *In re Zuckerman* 613 B.R. 707, 715, (B.A.P. 9th Cir. 2020) aff'd (9th Cir.,
3 Oct. 24, 2022, No. 20-60031) 2022 WL 13861067, “[t]his is not a default scenario; while [the
4 debtor] and his counsel chose not to attend trial, [the debtor] had answered the operative
5 complaint, participated in the litigation before trial, and received actual notice of trial and a
6 subpoena for his attendance at trial. See *Jorge v. Mannie (In re Mannie)*, 258 B.R. 440, 445 n.3
7 (Bankr. N.D. Cal. 2001) (‘A judgment after trial is not a default judgment simply because the
8 defendant fails to appear at trial.’).” “His answer was on file and was effective, and Appellees
9 were required to prove all the essential controverted allegations of their complaint.” *Id.* at 716.
10 That is exactly what took place here with respect to the underlying state court action.
11

12 Furthermore, “the bankruptcy court was not required to question how the state court
13 reached its decision; that type of inquiry would amount to an impermissible collateral attack on
14 the Judgment.” *Id.* Defendants’ reliance on what they contend to be a paucity of documentary
15 evidence surrounding the basis of the state court’s determination is irrelevant. Judgment was
16 entered in favor of Herzog for, *inter alia*, fraud. (Complaint, Ex. 1, p. 2, Ex. 5, p. 1, 5.) This
17 Court is not required to—and should not—second guess the state court’s judgment at this stage.
18

19 3. *The issue was necessarily decided*

20 Again, *In re Zuckerman* is instructive: “Even if it were a default judgment, we need not
21 address the sufficiency of the state court’s findings because it necessarily decided the issues. *Id.*
22 The Judgment provides at several places that Mr. Zuckerman is liable for fraud and awarded
23 punitive damages. The Judgment ‘necessarily included a determination of all of the facts
24

1 required for actual fraud under California law.’ *In re Younie*, 211 B.R. at 374.” In re Zuckerman
2 (B.A.P. 9th Cir. 2020) 613 B.R. 707, 718, aff’d (9th Cir., Oct. 24, 2022, No. 20-60031) 2022
3 WL 13861067.

4

5 The above ruling covers every aspect of the state court judgment, including the attorney
6 fee award (which was challenged by Defendants in their Motion). It is simply too late for
7 Defendants to dispute that award. This Court must presume the correctness of the ruling; the
8 Court has no discretion to disturb it. The Defendants slept on their rights and must live with the
9 consequences.

10

11 *4. The decision was final and on the merits*

12 Defendants do not contest that the state court judgment was final and on the merits.

13

14 *5. The parties against whom preclusion is sought are the same*

15 Defendants do not contest that they were parties to the underlying state court action and
16 judgment debtors therein. The other purported judgment debtor, L.M.L. Enterprises, is merely a
17 fictitious business name of the Levinsons (apparently based on the initials “Lisa Marie
18 Levinson”).

19

20 *6. Application of issue preclusion is consistent with relevant public policies*

21 “[T]hree fundamental policies ... support the application of issue preclusion in
22 appropriate cases: preservation of the integrity of the judicial system, promotion of
23 judicial economy, and protection of litigants from harassment by vexatious litigation.” *In*
24 *re Zuckerman* (B.A.P. 9th Cir. 2020) 613 B.R. 707, 718, aff’d (9th Cir., Oct. 24, 2022,
25 No. 20-60031) 2022 WL 13861067 (internal quotations and citations omitted). While the
bankruptcy court has discretion in weighing these factors, all three factors weigh strongly
in favor of Plaintiff herein.

1 The case of *In re Baldwin* (9th Cir. 2001) 249 F.3d 912 offers incisive commentary on each of
2 these three policies which is worth quoting. With respect to the first policy:

3
4 “[w]here, as here, the state court was fully capable of adjudicating the issue subsequently
5 presented to the bankruptcy court, we conclude that the public’s confidence in the state
6 judicial system would be undermined should the bankruptcy court relitigate the question
7 of whether Baldwin [the debtor] had acted with the intent to injure Kilpatrick [the
8 creditor]. … Moreover, relitigation in bankruptcy court of the issue decided by the state
9 court would conflict with the principle of federalism that underlies the Full Faith and
10 Credit Act.”

11 *In re Baldwin* (9th Cir. 2001) 249 F.3d 912, 920.

12 With respect to the second policy:

13 “[I]t is obvious that application of collateral estoppel in the present context will promote
14 judicial economy. If Baldwin were not precluded from relitigating the issue, the
15 bankruptcy court would have to conduct an evidentiary hearing in order to determine
16 whether Baldwin intentionally acted to injure Kilpatrick. Relying on the state court’s
17 determination allows the bankruptcy court to conserve judicial resources.”

18 *Ibid.*

19 With respect to the third policy:

20 “[W]e conclude that under these circumstances, application of collateral estoppel will
21 protect creditors from vexatious litigation. Baldwin had a full and fair opportunity to
22 litigate the issue in the state court proceedings. There is no indication in the record that
23 those proceedings violated Baldwin’s right to due process, nor does Baldwin allege any
24 constitutional infirmity. Baldwin forfeited his right to defend himself in state court. He
25 presents no good reason for having done so. It would be unfair to Kilpatrick to require
26 him to relitigate before the bankruptcy court what was properly decided by the state
27 court.”

28 *Ibid.*

29 **D. DETAILED RESPONSES TO THE MOTION**

30 **Motion:** “The defendants did not appear at the trial”. 5:18-19.

1 **Response:** At best, this is irrelevant. At worst, it is both misleading and damaging to the
2 Defendants' case:

3
4 Empty chair doctrine is a legal principle which says that if a party does not
5 produce a witness who is within its power to produce and who should have been
6 produced, the judge may instruct the jury to infer that the witness's evidence is
7 unfavorable to the party's case. According to this doctrine, lawyers may comment
on the absence of a prospective opposing witness and judges may invite the jury
to draw adverse inferences from that lack of evidence.

8 Empty-Chair Doctrine Law and Legal Definition

9 <https://definitions.uslegal.com/e/empty-chair-doctrine/>

10 Why is the Motion statement misleading? Because "Manuel Del Pomar appeared as
11 attorney for the defendants"! *Superior Court Judgment*, Ex. 3 to the Motion, p. 1 (PDF p. 32).

13 For what possible reason would the defendants' attorney appear at trial *without bringing*
14 *his own clients*? Only because *no truthful testimony by them could have helped their case more*
15 *than it would hurt it*. Again, this was after more than a year of litigation in which the
16 Defendants or their counsel appeared at every hearing. It was only after they saw that it was a
17 lost cause, that the defendants decided not to testify at their own trial, or to even show how
18 much they cared ... by attending it.

21 **Motion:** "Gewant also renewed the judgment in July, 2011 and apparently filed an
22 Application for Renewal of Judgment in June, 2020, but the state court docket does not
indicate that the judgment was renewed." 6:15-18.

23 **Response:** The Motion's statement is yet another obvious untruth. Gewant does not see how
24 such a statement could have been made after a good faith investigation of the facts. The

1 state court “docket” (register of actions) shows the renewal as having occurred on June 24, 2020,
2 not only by action of the Clerk but by action of the “Court”:

3
4 **06/24/2020 Court orders judgment renewed for Plaintiff Herzog, Jay against Defendant L.M.L. Enterprises, Defendant Levinson, Lisa and**
Defendant Levinson, Richard on the Complaint filed by JAY HERZOG on 05/16/2000 for the judgment amount of \$328,592.01, post judgment
interest \$189,614.58, and fee for filing renewal of \$45.00 for a total of \$518,251.59.

5
6 Ex. 9 to the Complaint [DE #1], p. 5.
7

8 For better legibility, here is a larger version, splitting the screenshot in half so that it fits on this
9 page:
10

11
12 **06/24/2020 Court orders judgment renewed for Plaintiff Herzog, Jay**
Defendant Levinson, Richard on the Complaint filed by JAY HERZOG
interest \$189,614.58, and fee for filing renewal of \$45.00 for a total c
13
14 **Jay against Defendant L.M.L. Enterprises, Defendant Levinson, Lisa and**
on 05/16/2000 for the judgment amount of \$328,592.01, post judgment
of \$518,251.59.
15
16

17 Just above that entry is the following entry, showing that the Clerk performed the required
18 ministerial act consistent with the judge’s order:
19
20

21 **06/24/2020 Notice Notice of Renewal; Issued and Filed by: Atlas Judgment Recovery Corp. (Assignee); As to: L.M.L. Enterprises (Defendant); Lisa**
Levinson (Defendant); Richard Levinson (Defendant)
22

23 Larger version:
24

25 **06/24/2020 Notice Notice of Renewal; Issued and Filed by: Atlas Judgment**
Levinson (Defendant); Richard Levinson (Defendant)
26

27
28 PLAINTIFF DENNIS GEWANT’S RESPONSE TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

1 Recovery Corp. (Assignee); As to: L.M.L. Enterprises (Defendant); Lisa
2

3 *Id.*
4

5 Ex. 1 to this Response is a true and correct copy of the Notice of Renewal. Defendants were
6 served with a copy of the Notice of Renewal at their then-last known address on July 15, 2020.
7

8 Ex. 2, Proof of Service of Notice of Renewal. That document was executed July 15, 2020 but
9 does not appear in the register of actions; yet a writ of execution was issued by the Clerk on July
10 1, 2020. This is permissible because the judgment was still enforceable, with interest, on that
11 date, as it would not yet have expired by July 1, having been renewed first on July 8, 2011, as
12 evidenced by this imperfect but still sufficiently clear entry in the register of actions (the entries
13 should read “Court orders judgment *renewed*,” not “*entered*”):
14

15 07/08/2011 Court orders judgment entered for Plaintiff Herzog, Jay against Defendant Levinson, Lisa, Defendant Levinson, Richard and
16 Defendant L.M.L. Enterprises on the Complaint filed by JAY HERZOG on 05/16/2000 for the principal amount of \$165,162.00 for a total of
\$165,162.00.
17

07/08/2011 Updated -- Judgment entered on 07/08/2011 ; Principal changed from 165,162.00 to 328,592.01

18 *Id.*, p. 6.
19

20 **Motion:** “The party asserting preclusion bears the burden of establishing the threshold
21 requirements. [cite] This means providing “a record sufficient to reveal the controlling
22 facts and pinpoint the exact issues litigated in the prior action.” 8:23-24. “The Plaintiff
23 cannot meet that standard, as there is no state court record which would allow this Court
to determine what underlying facts were at issue, and more importantly, what evidenced
[sic] was adduced and what legal conclusions were reached at trial.” 9:13-16.

24 **Response:** First, the Motion tries to pull a fast one on Gewant and this Court by inserting an
25 unsupported legal requirement. The quotations from the cases cited, several paragraphs earlier, in
26

1 apparent support of that requirement, do not contain any requirement that preclusion requires
2 clarity about “what evidence ... was adduced”. Neither Gewant nor this Court has any duty to go
3 searching through the cited cases to see where that requirement was expressed.
4

5 Second, the “controlling facts” are clearly evident from the record, including the state court
6 Complaint, as are “the evidence adduced” and the “legal conclusions ... reached at trial”. The
7 latter are clearly evident from the state court judgment:
8

9
10 1 The action proceeded to trial on the following counts: Breach of
11 2 written contract, money lent, money had and received, fraud,
12 3 account stated and unfair business practices.

13 4 Having heard the testimony of the witness presented and
14 5 reviewed the exhibits moved into evidence and having reviewed the
15 6 full pleadings on file in this action, the Court found in favor
16 7 of plaintiff, upon all counts plead, as and against the named
17 8 defendants, and each of them, Lisa Levinson, individually and dba
18 9 L.M.L. Enterprises, Richard Levinson, individually and dba L.M.L.
19 10 Enterprises and L.M.L. Enterprises and accordingly;

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff
2 Jay Herzog shall have and is awarded judgment as and against Lisa
3 Levinson, individually and dba L.M.L. Enterprises, Richard
4 Levinson, individually and dba L.M.L. Enterprises and L.M.L.
5 Enterprises in the sum of \$30,000.00, together with interest
6 thereon at the legal rate per annum from December 1, 1998, plus
7 costs in the amount of \$ 16,317.00 pursuant to plaintiff's
8 memorandum of costs and a trebling of all damages pursuant to
9 California Business and Professions Code § 17200 and § 17500 for
10 a total judgment of \$ 165,162.00

11 Dated:

12 NO 1 2001

13 IRVING S. FEFFER

14 For Judge Feffer to reach those ultimate conclusions, he must *necessarily have decided* that the
15 elements underlying “all counts plead” (line 7) had been met. In doing so, Judge Feffer relied on
16 “the testimony of the witness presented,” i.e., only that of Jay Herzog, AND the “exhibits moved
17 into evidence” as well as “the full pleadings on file” which included of course the Complaint,
18 with detailed allegations of FACT – *six pages’ worth* of such facts. Dates, places, amounts, and
19 “the Levinsons” were specified in the allegations. State Court Complaint, Ex. 1 to Motion, pp. 3-
20 8 (for fraud specifically, 5-6).

21 The Defendants’ own proposed “Finding of Fact” #4 describes the “evidence adduced”:

22
23 4. Herzog appeared at trial and testified. Three exhibits, including a one page contract
24 (that did not contain the name of either the plaintiff or defendants therein), a check and a
25 corporate authorization were introduced into evidence. [Superior Court minutes of trial,
Plaintiff’s Complaint, Exhibit 8].

26 DE #13, 2:12-16.

27
28 PLAINTIFF DENNIS GEWANT’S RESPONSE TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

1 The corporate authorization must have sufficed for Judge Feffer to link the Levinsons to the
2 business name on the contract. Moreover, the Defendants' company and the Defendants
3 individually were named as Defendants in the state court litigation from the beginning. In fact,
4 Defendants answered on behalf of their company:
5

6 SPECIAL DENIAL
7

8 1. Defendants, LISA LEVINSON and RICHARD LEVINSON, individually or dba as
9 L.M.L. ENTERPRISES (collectively hereinafter referred to as "Defendants") admit the
following paragraphs of Plaintiff's complaint: None.

10 Ex. 6 to Complaint, 2:4-9.

11 It would be unreasonable and an abuse of discretion for this Court to presume that Mr. Herzog's
12 testimony or "the exhibits moved into evidence" fell short of supporting, by the preponderance
13 of the evidence, what was stated in the Complaint. To do so would be to presume, with zero
14 evidence, that Judge Feffer abused *his* discretion. Such a conclusion by this Court would be
15 exactly the kind of refusal to grant "full faith and credit" to the judgments of other courts that is
16 forbidden by Article IV of the US Constitution, the preclusive power of state court judgments
17 that California grants *even to default judgments* (when certain criteria are met, as in this case; see
18 below), and the federal cases cited below:

19 [22:1711.1] **Required elements:** Under California law, collateral estoppel applies
20 where:

- 21 — the issues in both proceedings are identical;
22 — there was a final judgment on the merits; and
23 — the party against whom collateral estoppel is asserted was a party to the
24 prior adjudication or in privity with such party (e.g., husband and wife re

1 community property debts). [*In re Bugna, supra*, 33 F3d at 1057] [citing
2 28 USC § 1738; *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481-82,
3 102 S.Ct. 1883, 1897-98, 72 L.Ed.2d 262 (1982)]

4 Rutter Group, *Cal. Prac. Guide Bankruptcy Ch. 22-I*, December 2022 Update, p.
5 15.

6 Moreover:

7 **b. Judgments entitled to preclusive effect**

8 (1) [22:1712] **Default judgments:** [Even] A default judgment has preclusive
9 effect in a bankruptcy action to the same extent it would have in the state court in
10 which it was rendered. [*Far Out Productions, Inc. v. Oskar* (9th Cir. 2001) 247
11 F3d 986, 993; *In re Nourbakhsh* (9th Cir. 1995) 67 F3d 798, 800; see also *In re
Biggs* (BC D ID 2017) 563 BR 319, 327—default judgment for embezzlement
had preclusive effect under Idaho law in bankruptcy]

12 Under California law, a default judgment is given collateral estoppel effect if the
13 defendant:

14 — had actual notice of the litigation and an opportunity to participate; and
15 — the issues were “actually litigated” in the action. [*In re Cantrell* (9th
16 Cir. 2003) 329 F3d 1119, 1123-1124; *In re Harmon* (9th Cir. 2001) 250
F3d 1240, 1246-1249; see also *In re Green* (9th Cir. BAP 1996) 198 BR
17 564, 566—default judgment conclusively establishes the truth of all
material allegations contained in the complaint and every fact necessary to
18 uphold the default judgment]

19 (a) [22:1713] **“Actually litigated” requirement:** For purposes of a default
judgment, an issue is “actually litigated” when it is “properly raised by the
20 pleadings, or otherwise, and is submitted for determination, and is determined,
noting that a determination may be based on a failure of proof.” [*In re Moore* (BC
21 ND CA 1995) 186 BR 962, 971 (emphasis added); see also *In re Zuckerman* (9th
Cir. BAP 2020) 613 BR 707, 715-716—although technically not a default
judgment, question of debtor’s fraud was actually litigated in prior state court
action and judgment entered after trial in absentia for which debtor and his
counsel failed to appear]

22
23
24 *Id.*, p. 16.
25
26
27

1 That last part bears a striking similarity to the instant case, in which the Defendants admittedly
2 “did not appear at the trial” and failed to bring any case-in-chief (“Plaintiff rests. Defendant
3 having no rebuttal or (oral) defense at this time, rests”) (Ex. 2 to *Motion*). Of course in the instant
4 case, judgment was not taken by default. As stated above, “Defendants or their counsel appeared
5 at every hearing” until the trial, at which time only counsel appeared.

7 Similarly here, whatever the shortcomings of the allegations in the state court complaint and
8 anything subsequent to it in the state court litigation, “no objection was raised” other than the
9 filing of an Answer with the usual unsupported, unsworn denials. The time for the Levinsons to
10 actually disprove the allegations in the state court complaint was before the deadline for filing a
11 summary judgment motion, or at trial. They did neither, despite ample opportunity and legal
12 representation, and so the judgment must stand.

15 Moreover, the trial minutes dated July 17, 2001 (Ex. 2 to the *Motion*) indicate no “halftime”
16 motion for involuntary dismissal by the Levinsons’ then-attorney Del Pomar – the kind of
17 motion that is normally made when a party urges a Court to conclude that the plaintiff failed to
18 meet his burden of proof and thus there is no need for the defense to make a case-in-chief. Yet
19 Del Pomar did not go on to try to make his Defendants’ case either – and evidently never
20 intended to do so, since his clients were not present in court. It is as if Del Pomar simply rested
21 his face on his palm and hoped for a miracle for his clients. This Court should not give them one.

24 No more arguments appear to be necessary. However, after writing the above, Gewant obtained
25 certified copies of the trial briefs and exhibit list in the state court proceeding. Those documents

1 are included here as Exhibit 3. The “evidence adduced at trial” is made clear by these documents,
2 whose existence in the state court record was falsely denied and groundlessly demanded by the
3 Defendants in their Motion. The evidence included:

- 4 1. The December 3, 1998 agreement (First Trial Brief Exhibit A, p. 5 of Ex. 3);
- 5 2. A copy of a \$30,000 check from “Texlink (plaintiff’s assignor) … to the defendants”
6 (First Trial Brief Exhibit B, p. 6 of Ex. 3);
- 7 3. A statement that “in answers to interrogatories, defendant Richard Levinson has admitted
8 to being a convicted felon, charged with wire fraud” (First Trial Brief, p. 3 of Ex. 3)²;
- 9 4. A statement that:

10 To this end, defendants failed to appear at the F.S.C. in this matter and their
11 counsel advised of his belief that the defendants hold no defense herein.
12 Consistent therewith, defendants failed to file/exchange any exhibit or witness list
13 and should be precluded from introducing any evidence.

14 (Second Trial Brief, p. 13 of Ex. 3).

15 [End of the above section]

16
17
18
19
20
21 ² A criminal conviction may be used for only 10 years to attack a witness’s credibility – FRE
22 609. However, Gewant is not invoking Richard Levinson’s conviction for that purpose today, but
23 rather only pointing to the fact that Judge Feffer must be presumed to have considered it back
24 then, for that purpose. The expiration of the 10 years since then provides no legal foundation for
25 this Court to second-guess or overturn the decision made by Judge Feffer. The expiration of the
26 10 years means that this Court cannot consider that conviction when assessing Richard
27 Levinson’s credibility in the instant case. However, this Court clearly may consider the
28 Levensons’ many proven-false statements, made in the current litigation *with* (not *despite*) the
assistance of counsel.

1 **Motion:** “Actual fraud under California law has mirror image elements of the elements
2 found in Section 523(a)(2)(A) of the Bankruptcy Code. *In re Jung Sup Lee*, 335 B.R.
3 130, 136 (BAP 9th Cir, 2005).” 10:7-9.

4 **Response:** Plaintiff is grateful that the Defendants have admitted that if fraud is proven under
5 California law, it is proven under Ninth Circuit bankruptcy law. This meets the first of the five
6 *Harmon* tests (*Motion*, 8:15-22).

7 **Motion:** “Here, plaintiff makes no specific allegations of fraudulent conduct by the
8 debtors in his nondischargeability complaint, instead merely asserting that the prior state
9 court judgment included fraud....” 10:10-13. With respect to the fraud cause of action
10 (Fourth Cause of Action), there are only conclusory allegations, not specific citations to
11 facts that would allow a defendant to know, specifically, what the allegation of fraud
12 entailed and in which a fraud target needs to know with specificity. 10:15-19.

13 **Response:** This statement in the Motion violates several rules. The statement is false, and the
14 Levinsons and counsel have clear reason to know of its falsity. The Answer (DE #4, 3:12) denied
15 the five paragraphs of the Complaint in which those allegations were explicitly made:

16 20. The Levinsons engaged in misrepresentation, fraudulent omission and/or deceptive
17 conduct as well as unfair business practices, a codified form of fraud under the California
18 Business and Professions Code, toward Texlink International, Inc., the assignor and
19 predecessor-in-interest to Jay Herzog, the plaintiff and original judgment creditor, and
20 assignor of the judgment ultimately to Gewant.

21 21. The Levinsons had knowledge of the falsity or deceptiveness of their statements
22 and/or conduct.

23 22. In making those statements and or engaging in that conduct, the Levinsons intended
24 to deceive Texlink International, Inc.

25 23. Texlink International, Inc. justifiably relied on the Levinsons’ statements and/or
26 conduct.

27 24. Texlink International, Inc. was damaged and that damage was proximately caused by
28 its reliance on the Levinsons’ statements and/or conduct.

1 *Complaint [DE #1], pp. 6-7.*

2
3 Moreover, the Complaint in the instant case *incorporated the state court complaint in its entirety*
4 *by reference* as Exhibit 5, making the state court complaint ““part of the pleading for all
5 purposes’ per FRBP 7010 and FRCP 10(c)” (p. 3, para. 9), and *that* complaint included plenty of
6 “specific allegations of fraudulent conduct by the debtors” (see *State Court Complaint*, Ex. 1 to
7 Motion, pp. 3-8, as cited above).

8
9 Finally, the Levinsons’ time to dispute the legal sufficiency of the Complaint has long passed.
10

11 **Motion:** “[T]here are no findings of fact here which would assist the bankruptcy court in
12 determining whether all of the elements were satisfied.” 10:25-27

13 **Response:** True, but irrelevant. The Defendants cite no caselaw in support of their idea that
14 findings of fact must exist in the record for there to be preclusion. The record can be—and in this
15 case is—perfectly clear enough without a single explicit document called “findings of fact”.
16

17 **Motion:** “[T]he parties here are not identical to those in the state court proceeding, as
18 plaintiff, without any percipient knowledge of the underlying facts”. 11:1-3.

19 **Response:** True, but even less relevant than the preceding point quoted from the Motion.
20 Obviously, if the plaintiff has to go to trial, he will call witnesses who *do* have percipient
21 knowledge of the underlying facts. Gewant’s personal knowledge or lack thereof (other than for
22 the purpose of authenticating exhibits) is completely irrelevant to whether the record is sufficient
23 to avoid the need for trial.
24

25 **Motion:** “As to the applicable issue preclusion factors, it is uncertain as to whether the
26 issue to be precluded from relitigation is identical to that decided in the former

1 proceeding, because the record does not include any citation to the evidence with respect
2 to the elements of the cause of action, whether both individuals or neither established
fraudulent conduct.” 11:11-16.

3 **Response:** As stated above (10:21-24), the Motion already admitted (10:7-9) that fraud in
4 California has “mirror image elements” to what must be proven for nondischargeability. Even
5 had the Motion not admitted that, it would be easy to so prove. Surely that truth about that area
6 of California and bankruptcy law is familiar to this Court.
7

8 Also, Defendants here recapitulate the same “attempt to pull a fast one” that Gewant first
9 addressed at the bottom of page 17 above. Defendants cite no law in support of the proposition
10 that the specific evidence relied upon by the previous court must be evident in the record.
11

12 **Motion:** “Without findings of fact, this court cannot ascertain make the necessary
13 findings that plaintiff proved fraud in the underlying state court proceeding.” 12:2-4.
14

15 **Response:** Again, this is not true, and it is a rule violation to assert it without any supporting law
16 or any good faith attempt to make new law (which is in no way suggested). The statement is not
17 even close to being supported by any of the previously cited authorities.
18

19 **Motion:** “A state court’s final judgment as to the existence of a party’s fraud does not
20 control “the interpretation of exceptions to discharge under the [Code], while informed
by relevant state law, ultimately is a matter of federal law.” *In re Huh*, 506 B.R. 257, 272
(9th Cir. BAP, 2014).” 12:5-9.
21

22 **Response:** The above citation is dicta from a trial court case. It cannot and does not
23 outweigh binding precedent from the Supreme Court of the United States. Gewant agrees
24 with the quotation of high-level legal principle from *Huh*. However, in *Huh*, there was a twist
25 that makes none of the *specifics* of that case applicable to this one. The holding in *Huh* was that
26

1 the debt of a principal is dischargeable when the principal did not know, and had no reason to
2 know, “of the frauds of his agent”. *Huh*, at 272. In the instant case, allegations were made against
3 both of the Levinsons and proven at trial to the judge’s satisfaction. There is no indication in the
4 record that either of the Levinsons were any less culpable or unwitting participants in the fraud,
5 than the other. Since Judge Feffer entered judgment against both the Levinsons, again, this court
6 must presume that all the lower-level issues necessarily to support that ultimate decision, were in
7 fact decided.³
8

9
10 **Motion:** “A breakdown of the cost award by the State Court is not in the record. The
11 State Court awarded a total of \$16,317 in attorney fees. Since the judgment is silent to
12 this which *[sic]* cause of action attorney fees were awarded, Plaintiff cannot sustain his
burden and the attorney fees portion of the judgment are dischargeable.” 12:17-21.

13 **Response:** The second sentence in the Motion excerpt is another willful misrepresentation of the
14 record. Attorney fees are not mentioned in the judgment. The \$16,317 was explicitly awarded as
15 costs:
16
17
18
19
20
21

22 ³ What might make *Huh* even less applicable is that it seems to have just been overruled by the
23 recent Supreme Court case *Bartenwerfer v. Buckley*, 21-908, 598 U.S. ___ (February 22, 2023):
24 “Supreme Court holds that the Bankruptcy Code exemption from discharge for debts involving
fraud precludes the partner of the individual who committed the fraud from discharging a debt,
regardless of her own culpability.” <https://supreme.justia.com/cases/federal/us/598/21-908/>. A
25 search of Casetext.com performed in early March found no indication that *Huh* had been
26 overruled by *Bartenwerfer*, but maybe it is simply too soon for the database to have been
updated.
27

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff Jay Herzog shall have and is awarded judgment as and against Lisa Levinson, individually and dba L.M.L. Enterprises, Richard Levinson, individually and dba L.M.L. Enterprises and L.M.L. Enterprises in the sum of \$30,000.00, together with interest thereon at the legal rate per annum from December 1, 1998, plus costs in the amount of \$ 16,317.00 pursuant to plaintiff's memorandum of costs and a trebling of all damages pursuant to California Business and Professions Code § 17200 and § 17500 for a total judgment of \$ 165,162.00

Ex. 3 to Motion, 2:17.

As the prevailing party in the state court litigation, Herzog was entitled to all his costs. Defendants present no grounds whatsoever for this Court to deduct any part of the \$16,317 in costs and the interest that has accrued on that amount, from what is still due and owing on the debt.

Motion: “THE TREBLE DAMAGE PORTION OF THE ORIGINAL JUDGMENT WAS PURSUANT TO BPC SECTIONS 17200 AND 17500, CONSUMER PROVISIONS TO WHICH NO BAD INTENT NEED BE PROVEN.” 12:23-25. “[I]t is clear that the award for treble damages was based upon a non-intent statute.” 15:3-4.

Response: These statements constitute additional rules violations. BPC section 17500 obviously does include an intent requirement. Defendants and their counsel have perfectly good reason to know that it's false. They are on constructive notice of what the law says, and yet they decided not to discuss the content of BPC 17500 *at all*:

PLAINTIFF DENNIS GEWANT'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

1 “It is unlawful for any person, firm, corporation or association, or any employee thereof
2 **with intent** directly or indirectly to dispose of real or personal property or to perform
3 services, professional or otherwise, or anything of any nature whatsoever or **to induce** the
4 public to enter into any obligation relating thereto, to make or disseminate or cause to be
5 made or disseminated before the public in this state, or to make or disseminate or cause to be
6 made or disseminated from this state before the public in any state, in any newspaper
7 or other publication, or any advertising device, or by public outcry or proclamation, or in
8 any other manner or means whatever, including over the Internet, any statement,
9 concerning that real or personal property or those services, professional or otherwise, or
10 concerning any circumstance or matter of fact connected with the proposed performance
11 or disposition thereof, which is untrue or misleading, **and which is known, or which by**
12 **the exercise of reasonable care should be known, to be untrue or misleading,** or for
13 any person, firm, or corporation to so make or disseminate or cause to be so made or
14 disseminated any such statement as part of a plan or scheme **with the intent not to sell**
15 **that personal property or those services**, professional or otherwise, so advertised at the
16 price stated therein, or as so advertised. Any violation of the provisions of this section is a
17 misdemeanor punishable by imprisonment in the county jail not exceeding six months, or
18 by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that
19 imprisonment and fine.” **[emphasis added]**

20 California Business & Professions Code §17500

21 https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=17500&lawCode=BPC

22 A careful reading of that long first sentence makes clear that none of the instances of the word
23 “or” provide any escape for the Defendants. *There is no liability under BPC 17500 without*
24 *intent.*

25 Added “punch” for this interpretation is that the second sentence of that code section makes it a
26 *criminal* statute. Hence, no violation of it could be “stumbled into” through mere negligence.

27 Continuing throughout 18 months of litigation, and the lead-up to it, to fail to fill orders for
28 merchandise or refund the money given for it, is clearly not just “unreasonable”; it is clearly the
29 kind of dishonest behavior that the Bankruptcy Code is not intended to protect. The Levensons’

1 dishonesty in this regard was clear enough to Judge Feffer that he awarded treble damages for it.
2 He did not award the damages for violations of BPC 17200 **or** BPC 17500, but for violations of
3 “§ 17200 **and** § 17500”.

4
5 Back to the Motion’s denial of what BPC 17500 says: Does this level of dishonesty actually ever
6 win cases in the Central District Bankruptcy Court? All people of good conscience must
7 certainly hope that it does not.

8
9 **Motion:** “Since the treble damages are a lump sum, the non-dischargeable cause of
10 action supporting that full award must be clear from the record-otherwise there is a
11 question of fact as to what portion of those damages flow from the causes of action that
12 meet the criteria for the Section 523 cause of action alleged.... since the trial court did
13 not make specific findings of fact, it is almost impossible for the Bankruptcy Court to
14 glean upon what basis the finding of fraud was made.” Pp. 14-15.

15 **Response:** Per the preceding discussion, the judgment is perfectly clear about what the treble
16 damages were awarded for: BPC 17500 **AND** (NOT “**OR**”)! BPC 17500.

17 Judge Feffer must have found that the elements of fraud were all met under California law,
18 because that would be logically necessary to his ultimate finding of fraud. It is simply
19 unreasonable and unfounded to second-guess him on this point, an unreasonable reading of the
20 cited cases, and unjustified under the controlling cases starting at the bottom of p. 21, *supra*.

1 **E. CONCLUSION**

2 The 2001 bench trial provided the Levinsons with a full and fair opportunity to litigate
3 Herzog's claims against them. All issues necessary to a finding of nondischargeability of their
4 debt to Herzog were actually and necessarily litigated.

5
6 The Levinsons were present in court, represented by the same counsel that they had had
7 throughout the 18-month pendency of the case. The Levinsons and their counsel heard the
8 plaintiff's testimony and arguments first-hand. The fact that they chose to remain silent – indeed,
9 to not even appear at their own trial –when reasonable defendants would have spoken up in their
10 own defense estops them from raising any defense now.

12
13 There is no genuine dispute about any material fact, but this is true in a way that goes
14 against the Defendants. It would be manifestly unjust to allow any relitigation of the claims
15 beyond this summary procedure, including those for fraud and the BPC violations.

16
17 The Motion must be denied in its entirety. Hopefully this Court will go further.

STATEMENT OF GENUINE ISSUES

1 Dennis Gewant DBA Atlas Judgment Recovery
2 269 S Beverly Dr, Ste 102, Beverly Hills, CA 90212
3 Tel: 310-276-4900 / Fax: 310-273-6432
4 Email: atlasjudgmentrecovery@gmail.com
Assignee of Record, Creditor, and Plaintiff, Pro Se

5
6
7 **UNITED STATES BANKRUPTCY COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**
9

10 In re Richard Irving Levinson and Lisa
11 Marie Levinson,
12 Debtors

13 Dennis Gewant DBA Atlas
14 Judgment Recovery,
15 Plaintiff,

16 v.

17 Richard Irving Levinson and Lisa
18 Marie Levinson,
Defendants

19 Case No.: 2:22-BK-15330-WB
Chapter 7 Proceeding
Adv. Proc. No. 2:22-AP-01218-WB
DC NO.: DG-2

20 **PLAINTIFF DENNIS GEWANT'S
STATEMENT OF GENUINE ISSUES**

21 Filed concurrently with Response to Motion for
22 Summary Judgment

23 **STATEMENT OF GENUINE ISSUES**

24 The rule-based need for this Statement is awkward under the circumstances, because
Plaintiff Gewant's position is that there are no genuine issues for trial. The record supports a
complete denial of the Defendants' Motion and granting of the Plaintiff's own imminent Motion
For Summary Judgment. Nonetheless, Gewant wishes to comply with all rules and takes this

1 opportunity to clarify for the Court, separately from the Response, the misleading nature of
2 some of the Defendants' proposed Findings of Fact.
3

4 5. [N]o Findings of Fact or Conclusions of law were prepared or are in the court
5 record."

6 True, but irrelevant, as explained in many places throughout the Response.

7 7. Gewant has made collection efforts since acquiring the judgment such that the
8 Levinsons have paid more than \$120,000. [Plaintif's *sic*] complaint, Exhibit 4]."

9 Exhibit 4 is a copy of the assignment from Gewant's corporation to himself personally, executed
10 in 2020. It states that the plaintiff in the state court litigation, Jay Herzog, had collected nothing
11 from the defendants. It states nothing about how much was collected by Gewant's corporation or
12 by himself personally. Indeed, it could not state anything about Gewant's personal collection
13 efforts. How could he collect anything on the judgment before it was assigned to him?
14

15 The fact of how much has been collected toward the satisfaction of the state court judgment will
16 be dealt with in Gewant's upcoming motion for summary judgment. But how much has been
17 collected is irrelevant to how much of the remaining amount is dischargeable (if any). The
18 Levinsons appear to be taking the position that a judgment debtor is entitled to decide how much
19 of a judgment he is really obligated to pay.
20

21 10. A portion of the judgment included attorney fees without attributing those fees to any
22 specific cause of action. The one page "contract" attached to the complaint and
23 introduced into evidence at trial does not contain an attorney fee provision. [Plaintiff's
24 Complaint, Exhibit 5, State Court Minutes of Trial, Exhibit 8]."
25

1 What “portion of the judgment included attorney fees”? The judgment excerpt that lays out all
2 the awarded amounts is silent on the issue of attorney fees (see page 28), as are the Minutes
3 shown in Exhibit 8.

4
5 11. The State Court judgment did not contain any findings of fact or conclusions of law
6 which would permit this Court to determine whether the elements of fraud were actually
7 litigated in the underlying action.

8 The first line is true, but the implication of the remainder of the sentence is completely false, as
9 explained throughout the Response. The record is ample to permit this Court to make that
10 determination, again as explained throughout the Response.

DECLARATION OF DENNIS GEWANT

1 Dennis Gewant DBA Atlas Judgment Recovery
2 269 S Beverly Dr, Ste 102, Beverly Hills, CA 90212
3 Tel: 310-276-4900 / Fax: 310-273-6432
4 Email: atlasjudgmentrecovery@gmail.com
Assignee of Record, Creditor, and Plaintiff, Pro Se

5

6

7 **UNITED STATES BANKRUPTCY COURT**

8 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

9

10 In re Richard Irving Levinson and Lisa
11 Marie Levinson,
12 Debtors

13 Dennis Gewant DBA Atlas
14 Judgment Recovery,
15 Plaintiff,

16 v.

17 Richard Irving Levinson and Lisa
18 Marie Levinson,
19 Defendants

Case No.: 2:22-BK-15330-WB
Chapter 7 Proceeding
Adv. Proc. No. 2:22-AP-01218-WB
DC NO.: DG-2

DECLARATION OF DENNIS GEWANT

Date/Time: June 6, 2023, 2:00 PM
Courtroom: 1375
Judge: Hon. Julia W. Brand

Filed concurrently with Response to Motion for
Summary Judgment

20 I am the judgment creditor and assignee of the judgments and underlying debt whose
21 dischargeability is being disputed in the above-entitled action. I am over the age of 18 years and
22 competent to make this Declaration. If called upon as a witness, I could and would competently
23 testify to the matters set forth herein. I make this Declaration in support of my Response in
24 Opposition to Defendant's Motion for Summary Judgment.

25

26

27

28 DECLARATION OF DENNIS GEWANT

As an assignee, I have personal knowledge of the following:

- ✓ Statements made to me by Assignor and original judgment creditor, Jay Herzog, and his attorney in the underlying state court action, Jeffrey Brynan, concerning the facts of what happened in the case more than 20 years ago; and
 - ✓ The contents of the documents, including exhibits, that I have filed in connection with my Response.

All assertions of fact that I have made in the Response and the Statement of Genuine

Issues are made on information and belief, on the basis of the documents, which in most if not all cases speak for themselves. I have relied little, if at all, on oral statements made to me by Herzog and Brynan.

All of the exhibits to my Response are true and correct copies of the documents that they purport to be.

I declare under penalty of perjury that the above statements are true.

Signed APRIL 7, 2023 at Beverly Hills, California.

Dennis Gewant, Plaintiff

EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Atlas Judgment Recovery Corp.-Assignee of Record 269 S. Beverly Dr. Ste. # 102 Beverly Hills, Ca. 90212		TELEPHONE NO.: 310-276-4900	FOR COURT USE ONLY
ATTORNEY FOR (Name): Assignee of Record			
NAME OF COURT: Superior Court of California-Los Angeles County			
STREET ADDRESS: 111 N. Hill St.			
MAILING ADDRESS:			
CITY AND ZIP CODE: Los Angeles, Ca. 90012			
BRANCH NAME: Stanley Mosk			
PLAINTIFF: Jay Herzog			
DEFENDANT: Lisa Levinson an Ind. dba L.M.L. Enterprises, and Richard			
NOTICE OF RENEWAL OF JUDGMENT		CASE NUMBER: BC230085	

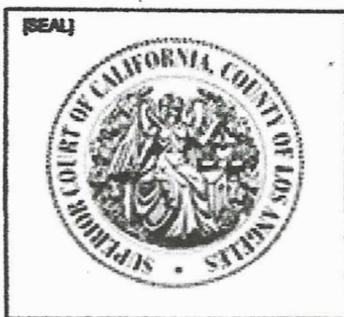
TO JUDGMENT DEBTOR (name): Lisa Levinson an Ind. dba L.M.L. Enterprises & Richard Levinson, an Ind. dba
L.M.L enterprises

1. This renewal extends the period of enforceability of the judgment until 10 years from the date the application for renewal was filed.
2. If you object to this renewal, you may make a motion to vacate or modify the renewal with this court.
3. You must make this motion within 30 days after service of this notice on you.
4. A copy of the Application for and Renewal of Judgment is attached (Cal. Rules of Court, rule 3.1900).

Sherri R. Carter Executive Officer / Clerk of Court

Date: 06/24/2020

Clerk, by _____ E. Allen _____, Deputy



See CCP 683.160 for information on method of service

EXHIBIT 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Dennis Gewant dba Atlas Judgment Recovery (Assignee of Record) 269 S. Beverly Dr. Ste. #102 Beverly Hills, Ca. 90212		FOR COURT USE ONLY
TELEPHONE NO.: 310-276-4900 FAX NO. (Optional):		
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name): In Pro Per		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
STREET ADDRESS: 111 N. Hill St.		
MAILING ADDRESS:		
CITY AND ZIP CODE: Los Angeles, Ca. 90012		
BRANCH NAME: Stanley Mosk		
PETITIONER/PLAINTIFF: Jay Herzog		
RESPONDENT/DEFENDANT: Lisa Levinson & Richard Levinson dba L.M.L. Enterprises		
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL		CASE NUMBER: BC230085

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
269 S. Beverly Dr. Beverly Hills, Ca. 90212 (business)
3. On (date): 7/15/2020 I mailed from (city and state): Beverly Hills, Ca. the following documents (specify):
Application of Renewal of Judgment and Notice of Renewal of Judgment

The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):
 - depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
 - a. Name of person served: Lisa Levinson & Richard Levinson
 - b. Address of person served:
9858 Vidor Dr.
Los Angeles, Ca. 90035

The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 15, 2020

S. Insul

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

EXHIBIT 3

1 Jeffrey Brynan, State Bar No. 70304
2 PETERSON & BRYNAN
3 9430 Olympic Boulevard, Suite 400
4 Beverly Hills, CA 90212-4552
5 Telephone: (310) 552-3035
6 Facsimile: (310) 556-1484

FILED
LOS ANGELES SUPERIOR COURT
JUN 19 2001
JOHNA CLARKE, CLERK
BY M. FREGANZO DEPUTY
alleged

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA.

9 COUNTY OF LOS ANGELES

10 JAY HERZOG) CASE NO.: BC 230085
11 Plaintiff,) PLAINTIFF'S MSC BRIEF
12 vs.) Case Assigned to Honorable
13 LISA LEVINSON, individually and) Irving S. Feffer, Dept. 51
14 dba L.M.L. ENTERPRISES; RICHARD) Hearing Date: June 21, 2001
15 LEVINSON individually and dba) Time: 9:00 a.m.
16 L.M.L. ENTERPRISES; L.M.L.) Department: 51
17 ENTERPRISES; and Does 1 through)
18 100, inclusive,)
19 Defendants.)
20 _____)

21 TO THE COURT, ALL PARTIES HEREIN AND TO THEIR RESPECTIVE
22 ATTORNEYS OF RECORD:

23 PLAINTIFF Jay Herzog hereby submits his MSC Brief in the instant
matter:

24 1. PARTIES:

25 Plaintiff: Jay Herzog by the Law Offices of Peterson & Brynan

26 Defendants: Lisa Levinson, Richard Levinson and L.M.L.
27 Enterprises by Manuel del Pomar.

1 2. GENERAL STATEMENT OF CASE:

2 In the instant matter, both parties are engaged in the garment
3 industry and involved in the retail and wholesale sale of garments,
4 primarily, lingerie items.

5 Over the course of approximately two years the parties conducted
6 several transactions between them, without incident or dispute.

7 On or about December 3, 1998 the parties entered into an
8 agreement whereby L.M.L. Enterprises, a partnership (or association)
9 comprised of Richard Levinson and his wife, Lisa Levinson offered to
10 sell to Texlink International (the assignor of the claims to
11 plaintiff herein) certain merchandise for a total sum of \$30,000.
12 The invoice in that regard is attached hereto as Exhibit "A".

13 In compliance with that agreement, Texlink (plaintiff's
14 assignor) paid the sum of \$30,000 to the defendants, and each of
15 them, for this merchandise. A copy of the check for such payment is
16 attached hereto as Exhibit "B". However, on or about December 30,
17 1998 the defendants breached the contract by failing to deliver or
18 otherwise supply the goods that were purchased and simply retained
19 the \$30,000 that had been paid.

20 Based thereon, plaintiff has filed causes of action for breach
21 of written contract pursuant to the written invoice and, causes of
22 action for money lent and money had and received and account stated.
23 A cause of action for fraud has also been filed, along with a cause
24 of action for unfair business practices.

25 With respect to the cause of action for unfair business
26 practices, it is the contention of plaintiff that the defendants, and
27 each of them, had previously entered into a series of transactions

1 with plaintiff's assignor, involving minimal amounts of money all
2 designed by defendants to gain the trust of plaintiff's assignor. It
3 is contended that defendants engaged in this systematic course of
4 conduct for the ultimate purpose of then inducing plaintiff's
5 assignor to provide \$30,000 for the purchase of certain merchandise,
6 which plaintiff and his assignor are now informed and believe never
7 existed and that defendants entered into that transaction for the
8 sole purpose of obtaining the subject \$30,000 from plaintiff's
9 assignor, with no intention of providing the merchandise called for
10 under the subject contract.

11 It is the contention of plaintiff that this ongoing plan and
12 scheme constitutes a violation of the California Business and
13 Professions Code Section 17200 and 17500 and that as a result, in
14 addition to being entitled to the reimbursement of the subject
15 \$30,000, that plaintiff is entitled to the imposition of attorney
16 fees and treble damages.

17 To this end, in answers to interrogatories, defendant Richard
18 Levinson has admitted to being a convicted felon, charged with wire
19 fraud. Plaintiff is now also informed and believes that the entirety
20 of defendants' plan and scheme herein was to deceive, defraud and
21 otherwise deprive plaintiff and his assignor of the subject \$30,000
22 and so that Mr. Levinson could utilize same for the repayment of
23 gambling debts.

24 In the course of discovery in this litigation, defendants
25 contend that they have a full and complete defense to this matter yet
26 have refused and failed to present any facts other than to contend
27 that the subject invoice, set forth on their own "letterhead" is a
28

1 fabrication. Defendants also claim they have other documents to
2 prove that the subject complaint is a sham yet, despite repeated
3 informal and formal document requests, have never produced such proof
4 and have refused to respond to discovery requests in this regard.

5 It is respectfully contended by plaintiff that there is no
6 defense to the instant matter, that defendants, and each of them,
7 received the subject \$30,000, provided no consideration in exchange
8 therefor and under any theory are required to reimburse plaintiff
9 said sum, along with the other damages as provided by the California
10 Business and Professions Code.

11 3. SETTLEMENT DISCUSSIONS:

12 To date, there has been effectively no settlement discussions.
13 Initially, defendants indicated their willingness to make a
14 settlement proposal and then withdrew same, claiming that, without
15 any support thereof, they have a complete defense to this case.

16 DATED: June 18, 2001

Respectfully submitted

17 PETERSON & BRYNAN

18 By:

19 JEFFREY BRYNAN
20 Attorneys for Plaintiff

21

23

24

27

28

INVOICE

L. M. L. ENTERPRISES
146 S. Wetherly Dr. # 4
Los Angeles, CA 90048

2132

INVOICE DATE	12/03/98
CUSTOMER'S ORDER NO.	113098

SOLD TO: Texlink international Inc.
450 S. Swall Dr
Beverly Hills Ca. 90211

SHIP TO:
Texlink

To be picked up

12/07/98

Adams
'812

Invoice

Total

\$30,000

Ex. 3, p. 5 of 25

EX-3

CONFIDENTIAL AND CREDIT

CONTINENTAL BUSINESS CREDIT INC. 16027 Ventura Boulevard, Suite 610 Encino, California 91436-2751
Postage Paid At: UNION BANK OF CALIFORNIA, N.A.
California, Oregon, Washington
and Montana Subdivisions

DATE December 9, 1998

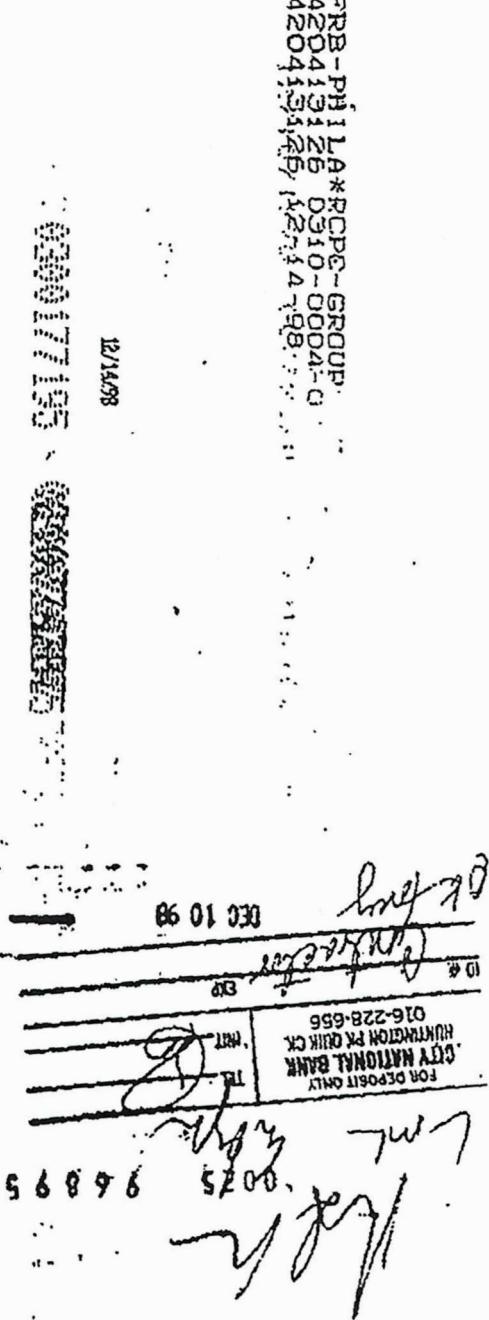
PAY *Thirty thousand & no/100**

TO THE ORDER OF J.L. Enterprises
146 S. Wetherly Dr. #4
Los Angeles, Ca 90048

DOLLARS \$ *#30,000.00**

CONTINENTAL BUSINESS CREDIT, INC.
[Signature]
ATTORNEY-IN-FACT
AUTHORIZED AGENT
430240558 AUTHORIZED AGENT

*#30,000.00** 1003110002676 200908000051811
THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK: HOLD AT AN ANGLE TO VIEW.



1 PROOF OF SERVICE
2 1013A (3) CCP Revised 1/1/88

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California.
5 I am over the age of 18 and not a party to the within action; my
6 business address is: 9430 Olympic Boulevard, Suite 400
7 Beverly Hills, CA 90212-4552.

8 On June 18, 2001, I served the foregoing document: PLAINTIFF'S
9 MSC BRIEF on the interested parties in this action

— by placing the true copies thereof enclosed in sealed envelopes
10 addressed as stated on the attached mailing list:

X by placing the original a true copy thereof enclosed in
11 sealed envelopes addressed as follows:

12 SEE ATTACHED LIST

13 X BY MAIL

14 * I deposited such envelope in the mail at Beverly Hills,
15 California. The envelope was mailed with postage thereon fully
16 prepaid.

17 X I caused such envelope to be deposited in the mail at
18 Beverly Hills, California. The envelope was mailed with postage
thereon fully prepaid.

19 I am "readily familiar" with firm's practice of collection and
20 processing correspondence for mailing. It is deposited with U.S.
21 postal service on that same day in the ordinary course of business.
22 I am aware that on motion of party served, service is presumed postal
23 service on that same day in the ordinary course of business. I am
24 aware that on motion of party served, service is presumed invalid if
25 postal cancellation date or postage meter date is more than 1 day
26 after date of deposit for mailing in affidavit. Executed on
27 June 18, 2001, at Beverly Hills, California.

28 XX (State) I declare under penalty of perjury under the laws of
the State of California that the above is true and
correct.

— (Federal) I declare that I am employed in the office of a member
of the bar of this court at whose direction the
service was made.


GAIL CANDIOTTI

* (By mail signature must be of person depositing envelope in mail
slot, box or bag)

** (For personal service signature must be that of messenger)

1
2 Manuel del Pomar, Esq.
3 1534 Greenfield Avenue
4 Los Angeles, California 90025
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I am sending you a copy of the original complaint filed in the above case.
Please file it in your office, or consider it filed.

DAVID W. SLAYTON, Executive Officer / Clerk of the
San Joaquin County Court of Probate, County of Los Angeles

Date: May 12, 2023 By: Debra A. [Signature]



I certify that this is a true and correct copy of the original
on file in or issued from this office, consisting of 8 pages.



DAVID W. SLAYTON, Executive Officer / Clerk of the
Superior Court of California, County of Los Angeles.

MAR 15 2023
Date: _____ By: K. CORTEZ, Deputy

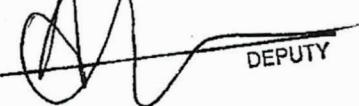
K. CORTEZ

1 Jeffrey Brynan, State Bar No. 70304
 PETERSON & BRYNAN
 2 9430 Olympic Boulevard, Suite 400
 Beverly Hills, CA 90212-4552
 3 Telephone: (310) 552-3035
 Facsimile: (310) 556-1484
 4
 5

6 Attorneys for Plaintiff
 7
 8

FILED
 LOS ANGELES SUPERIOR COURT

JUL 12 2001

BY  DEPUTY

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

10	JAY HERZOG)	CASE NO.: BC 230085
11)	PLAINTIFF'S TRIAL BRIEF
12	Plaintiff,)	
13	vs.)	Case Assigned to Honorable Irving S. Feffer, Dept. 51
14	LISA LEVINSON, individually and))	Hearing Date: July 17, 2001
15	dba L.M.L. ENTERPRISES; RICHARD))	Time: 10:00 a.m.
16	LEVINSON individually and dba))	Department: 51
17	L.M.L. ENTERPRISES; L.M.L.))	
18	ENTERPRISES; and Does 1 through))	
	100, inclusive,)	
)	
	Defendants.)	
)	
)	

19 TO THE COURT, ALL PARTIES HEREIN AND TO THEIR RESPECTIVE
 20 ATTORNEYS OF RECORD:

21 PLAINTIFF Jay Herzog hereby submits his Trial Brief in the
 22 instant matter:

23 1. PARTIES:

24 Plaintiff: Jay Herzog by the Law Offices of Peterson & Brynan
 25 Defendants: Lisa Levinson, Richard Levinson and L.M.L.
 26 Enterprises by Manuel del Pomar.
 27

1 2. GENERAL STATEMENT OF CASE:

2 The parties herein are engaged in the garment industry and
3 involved in the retail and wholesale sale of garments, primarily,
4 lingerie items.

5 Over the course of approximately two years the parties conducted
6 several transactions between them, without incident or dispute.

7 On or about December 3, 1998 the parties entered into an
8 agreement whereby defendants, L.M.L. Enterprises, a partnership (or
9 association) comprised of Richard Levinson and his wife, Lisa
10 Levinson offered to sell to Texlink International (the assignor of
11 the claims to plaintiff herein) certain merchandise for a total sum
12 of \$30,000. The invoice in that regard is attached hereto as Exhibit
13 "A".

14 In compliance with that agreement, Texlink (plaintiff's
15 assignor) paid the sum of \$30,000 to the defendants, and each of
16 them, for this merchandise. A copy of the check for such payment is
17 attached hereto as Exhibit "B". However, on or about December 30,
18 1998 the defendants breached the contract by failing to deliver or
19 otherwise supply the goods that were purchased and simply retained
20 the \$30,000 that had been paid.

21 Based thereon, plaintiff has filed causes of action for breach
22 of written contract pursuant to the written invoice and, causes of
23 action for money lent and money had and received and account stated.
24 A cause of action for fraud has also been filed, along with a cause
25 of action for unfair business practices.

26 With respect to the cause of action for unfair business
27 practices, it is the contention of plaintiff that the defendants, and

1 each of them, had previously entered into a series of transactions
2 with plaintiff's assignor, involving minimal amounts of money all
3 designed by defendants to gain the trust of plaintiff's assignor. It
4 is contended that defendants engaged in this systematic course of
5 conduct for the ultimate purpose of then inducing plaintiff's
6 assignor to provide \$30,000 for the purchase of certain merchandise,
7 which merchandise was never supplied. Plaintiff and his assignor are
8 now informed and believe the merchandise never existed and that
9 defendants entered into the said transaction for the sole purpose of
10 obtaining the subject \$30,000 from plaintiff's assignor, with no
11 intention of providing the merchandise called for under the subject
12 contract.

13 It is the contention of plaintiff that this ongoing plan and
14 scheme constitutes a violation of the California Business and
15 Professions Code Section 17200 and 17500 and that as a result, in
16 addition to being entitled to the reimbursement of the subject
17 \$30,000, that plaintiff is entitled to the imposition of attorney
18 fees and treble damages.

19 To this end, in answers to interrogatories, defendant Richard
20 Levinson has admitted to being a convicted felon, charged with wire
21 fraud. Plaintiff is now also informed and believes that the entirety
22 of defendants' plan and scheme herein was to deceive, defraud and
23 otherwise deprive plaintiff and his assignor of the subject \$30,000
24 and so that Mr. Levinson could utilize same for the repayment of
25 gambling debts.

26 It is respectfully contended by plaintiff that there is no
27 defense to the instant matter and that defendants, and each of them,

1 received the subject \$30,000, provided no consideration in exchange
2 therefor and under any theory are required to reimburse plaintiff
3 said sum, along with the other damages as provided by the California
4 Business and Professions Code. To this end, defendants failed to
5 appear at the F.S.C. in this matter and their counsel advised of his
6 belief that the defendants hold no defense herein. Consistent
7 therewith, defendants failed to file/exchange any exhibit or witness
8 list and should be precluded from introducing any evidence.

9

10 DATED: July 9, 2001

Respectfully submitted

11 PETERSON & BRYNAN

12 By:

13 JEFFREY BRYNAN
14 Attorneys for Plaintiff

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INVOICE

L. M. L. ENTERPRISES

146 S. Wetherly Dr. #4
Los Angeles, CA 90048

2132

INVOICE DATE	12/03/98
CUSTOMER'S ORDER NO.	113098

SOLD TO:

Texlink international Inc.

450 S. Swall Dr

Beverly Hills Ca. 90211

SHIP TO:

Texlink

To be picked up

12/07/98

SALESMAN Levinson	SHIPPED VIA self	TERMS c.o.d.	F.O.B.
----------------------	---------------------	-----------------	--------

Adams
'812

Invoice

Total \$30,000

Ex. 3, p. 14 of 25

CONTINENTAL
BUSINESS CREDIT INC

16027 Ventura Boulevard, Suite 610
Encino, California 91436-2751

Postage Paid
UNION BANK OF CALIFORNIA, N.A.
California, Oregon, Washington
CHASE MANHATTAN BANK DEPARTMENT

0000518

No 0015242

62-26/311

DATE December 9, 1998

PAY **#Thirty thousand & no \$/100****

TO THE ORDER OF

L.L. Enterprises
146 S. Wetherly Dr. #4
Los Angeles, ca 90048

DOLLARS \$ ***\$30,000.00****

COMMENTIAL BUSINESS CREDIT, INC.

Chuck

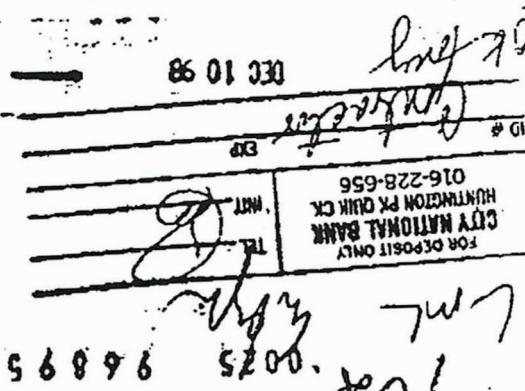
4302409358 AUTHORIZED AGENT

\$0000001524203110002678 2009080000518

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES AN ARTIFICIAL WATERMARK. HOLD AT APPROPRIATE VIEWING ANGLE.

12/14/98

420413426 12-14-98-0
FIRE-BR-PHILA-RCPG-GROUP
420413426 12-14-98-0



1 PROOF OF SERVICE

2 1013A (3) CCP Revised 1/1/88

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California.
5 I am over the age of 18 and not a party to the within action; my
business address is: 9430 Olympic Boulevard, Suite 400
5 Beverly Hills, CA 90212-4552.

6 On July 9, 2001, I served the foregoing document: PLAINTIFF'S
MSC BRIEF on the interested parties in this action

— by placing the true copies thereof enclosed in sealed envelopes
7 addressed as stated on the attached mailing list:

X by placing the original X a true copy thereof enclosed in
8 sealed envelopes addressed as follows:

9 SEE ATTACHED LIST

10 X BY MAIL

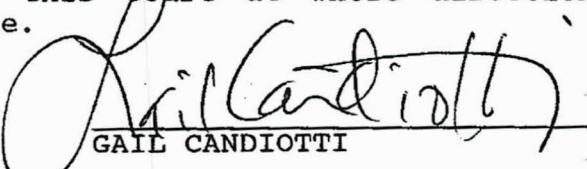
11 * I deposited such envelope in the mail at Beverly Hills,
California. The envelope was mailed with postage thereon fully
prepaid.

12 X I caused such envelope to be deposited in the mail at
Beverly Hills, California. The envelope was mailed with postage
thereon fully prepaid.

14 I am "readily familiar" with firm's practice of collection and
15 processing correspondence for mailing. It is deposited with U.S.
16 postal service on that same day in the ordinary course of business.
I am aware that on motion of party served, service is presumed postal
17 service on that same day in the ordinary course of business. I am
18 aware that on motion of party served, service is presumed invalid if
postal cancellation date or postage meter date is more than 1 day
after date of deposit for mailing in affidavit. Executed on
July 9, 2001, at Beverly Hills, California.

19 XX (State) I declare under penalty of perjury under the laws of
the State of California that the above is true and
20 correct.

21 — (Federal) I declare that I am employed in the office of a member
of the bar of this court at whose direction the
service was made.

22 
23 GAIL CANDIOTTI

24 * (By mail signature must be of person depositing envelope in mail
slot, box or bag)

25 ** (For personal service signature must be that of messenger)

26

27

28

1
2 Manuel del Pomar, Esq.
3 1534 Greenfield Avenue
4 Los Angeles, California 90025
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I am giving you this copy of the original
as soon as possible, so that you may be aware
of the contents.

DAVID W. SLAYTON, Executive Officer / Clerk of the
San Joaquin County Court of Appeals, County of Los Angeles

RECEIVED
MAY 12 1984
SHERIFF'S OFFICE
DEPARTMENT OF SHERIFF



I certify that this is a true and correct copy of the original
on file in or issued from this office, consisting of 3 pages.



DAVID W. SLAYTON, Executive Officer / Clerk of the
Superior Court of California, County of Los Angeles.

Date: 15 2023 By: K. Cortez, Deputy
K. CORTEZ

1 Jeffrey Brynan, State Bar No. 70304
2 PETERSON & BRYNAN
3 9430 Olympic Boulevard, Suite 400
4 Beverly Hills, CA 90212-4552
5 Telephone: (310) 552-3035
6 Facsimile: (310) 556-1484

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 JAY HERZOG) CASE NO.: BC 230085
11)
12 Plaintiff,) (Case Assigned to
13 vs.) Honorable Irving S. Feffer
14) Department 51)
15 LISA LEVINSON, individually and) JOINT EXHIBIT LIST
16 dba L.M.L. ENTERPRISES; RICHARD) TRIAL DATE: July 17, 2001
17 LEVINSON individually and dba) DEPT: 51
18 L.M.L. ENTERPRISES; L.M.L.) ENTERPRISES; and Does 1 through
19 100, inclusive,)
20 Defendants.)
21 _____)

22 TO THE COURT:
23 Plaintiffs and defendants hereby submit this Joint Exhibit List
24 for the Trial set in the above-entitled matter on July 17, 2001.
25
26
27
28

FILED
LOS ANGELES SUPERIOR COURT
JUN 14 2001
JOHN A. CLARK, CLERK
S. J. PEGAS
BY M. FRANCISCO, DEPUTY

1

EXHIBITS

2

3 BY PLAINTIFF:

4

Exhibit No. 1 - That certain check no. 0015242 from Continental
Business Credit, Inc. to LML Enterprise, dated
December 9, 1998.

5

Exhibit No. 2 - That certain invoice #2132 on LML Enterprises
letterhead, dated December 3, 1998 for sale
of merchandise described to Texlink, Customer
order number 113098.

6

Plaintiff further intends to introduce any and all documents
as necessary for rebuttal and as otherwise permitted by law and
all discovery requests and responses, propounded and served in
this case.

7

8

BY DEFENDANTS:

9

10

Defendants have failed to communicate in any fashion to prepare
this exhibit list and have offered no exhibits for identification
nor inclusion herein.

11

June 13, 2001

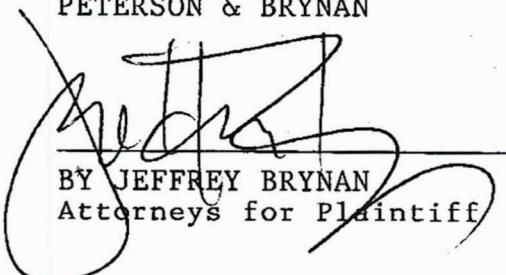
Respectfully submitted,

12

PETERSON & BRYNAN

13

14


BY JEFFREY BRYAN
Attorneys for Plaintiff

15

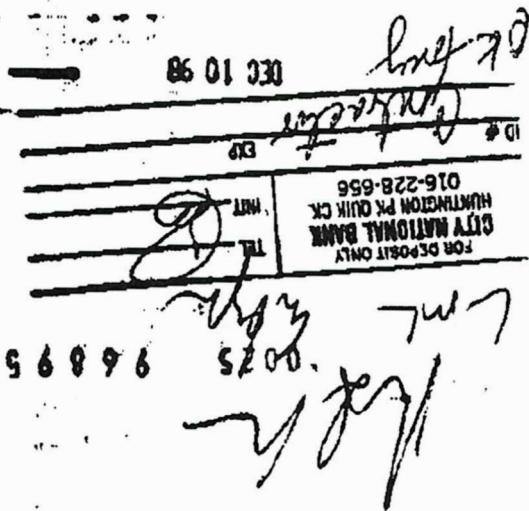
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1 X3

CONTINENTAL BUSINESS CREDIT INC		No 0015242	6/26/311	0000518
16027 Ventura Boulevard, Suite 610 Encino, California 91436-2751		Postage Paid At: UNION BANK OF CALIFORNIA, N.A. Custodian, Oregon, Washington CHASE MANHATTAN BANK, NEW YORK	DATE December 9, 1998	
* * * * * PAY		DOLLARS \$ ***30,000.00**		
TO THE ORDER OF: J.L. Enterprises 146 S. Wetherly Dr. #4 Los Angeles, ca 90048		CONTINENTAL BUSINESS CREDIT, INC. <i>Jack L. Wetherly</i> 430240958 AUTHORIZED AGENT		
* * * * *		10000000152426 100311002676 20090800000518# THE REVERSE SIDE OF THIS CHECK INCLUDES AN ATTACHED WATERMARK. PLEASE REFER TO IMAGE.		



INVOICE

L. M. L. ENTERPRISES

146 S. Wetherly Dr. # 4
Los Angeles, CA 90048

2132

INVOICE DATE	12/03/98
CUSTOMER'S ORDER NO.	113098

SOLD TO: Texlink international Inc.

450 S. Swall Dr

Beverly Hills Ca. 90211

SHIP TO: TexLink

REFERENCES

To be picked up

Adams
'812

Invoice

Total \$30,000

Ex. 3, p. 22 of 25

1 PROOF OF SERVICE

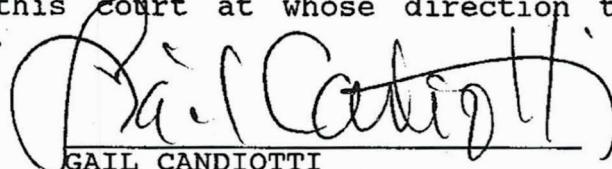
2 1013A (3) CCP Revised 1/1/88

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California.
I am over the age of 18 and not a party to the within action; my
business address is: 9430 Olympic Boulevard, Suite 400
5 Beverly Hills, CA 90212-4552.6 On June 13 2001, I served the foregoing document: on
the interested parties in this action ~~Exhibits A-L~~
7 — by placing the true copies thereof enclosed in sealed envelopes
X by placing the original X a true copy thereof enclosed in
8 sealed envelopes addressed as follows:

9 SEE ATTACHED LIST

10 X BY MAIL

11 * I deposited such envelope in the mail at Beverly Hills,
California. The envelope was mailed with postage thereon fully
prepaid.12 X I caused such envelope to be deposited in the mail at
Beverly Hills, California. The envelope was mailed with postage
thereon fully prepaid.13 I am "readily familiar" with firm's practice of collection and
processing correspondence for mailing. It is deposited with U.S.
14 postal service on that same day in the ordinary course of business.
I am aware that on motion of party served, service is presumed postal
15 service on that same day in the ordinary course of business. I am
16 aware that on motion of party served, service is presumed invalid if
17 postal cancellation date or postage meter date is more than 1 day
18 after date of deposit for mailing in affidavit. Executed on
June 13 2001, at Beverly Hills, California.19 XX (State) I declare under penalty of perjury under the laws of
20 the State of California that the above is true and
correct.21 — (Federal) I declare that I am employed in the office of a member
of the bar of this court at whose direction the
service was made.22 
23 GAIL CANDIOTTI24 * (By mail signature must be of person depositing envelope in mail
slot, box or bag)

25 ** (For personal service signature must be that of messenger)

1 | Manuel DelPomar, Esq.
2 | 1534 Greenfield Avenue
| Westwood, CA 90025

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It is a fine and costly book of the Chinese.
I have been told this often, considering the value.

DAVID W. SPALTON, Executive Officer & Clerk to the
Sheriff County of St. Louis, County of St. Louis

DS-12 Series
DS-12 Series
DS-12 Series



I certify that this is a true and correct copy of the original
on file in or issued from this office, consisting of 6 pages.



DAVID W. SLAYTON, Executive Officer / Clerk of the
Superior Court of California, County of Los Angeles.

Date: MAR 15 2023 By: K. CORTEZ, Deputy

K. CORTEZ

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled (specify): PLAINTIFF DENNIS GEWANT'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, with three exhibits, Statement of Genuine Issues, and Declaration of Dennis Gewant

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (date) 04/08/2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

(Judge's Copy) Hon. Julia W. Brand, United States Bankruptcy Court, 255 E. Temple Street, Suite 1382 / Courtroom 1375, Los Angeles, CA 90012

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 04/07/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

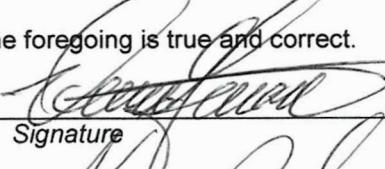
Defendants' counsel via email per written agreement: David S Hagen, DavidHagenLaw@gmail.com

To Defendants through Richard Levinson: richlevinson@prodigy.net

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

04/07/2023 Dennis Gewant, as to emailing
Date Printed Name


Signature

4/8/2023 S. INSUL, AS TO MAILING Judge's copy

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.